

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 811 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SHARIFABEN ABDUL RAHIM PATHAN

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner
MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/04/2000

ORAL JUDGEMENT

#. The petitioner- Sharifaben Abdul Rahim Pathan has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by District Magistrate, Ahmedabad, in exercise of powers under

Section 3(1) of the PASA Act, dated December 4, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration 5 offences registered against the petitioner. The detaining authority also took into consideration the statements of five anonymous witnesses in respect of different incidents and came to conclusion that the petitioner is a "bootlegger", that her activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. Ms. Kachchhwah, learned advocate, appearing for the petitioner has assailed the order of detention on the ground that the detaining authority has not verified the statements personally. She however, submitted that out of the statements of five anonymous witnesses, statements of only three witnesses have been verified by Sub Divisional Magistrate whereas the privilege under section 9(2) of the PASA Act is exercised for all five anonymous witnesses and therefore, there is improper exercise of powers under section 9(2) of the PASA Act. The exercise of powers under Section 9(2) of the PASA Act is improper and has resulted into denial of right of making an effective representation as contemplated under Article 22 (5) of the Constitution. Learned counsel for the petitioner therefore, submitted that, in light of the decision of a Division Bench of this Court in the case of (BAI AMINA v. State of Gujarat & others, 1981 GLR 1186, this petition may be allowed.

#. As regards the offences, she submitted that the last offence relates to 22nd June, 1999 and after a lapse of about six months, the order is passed December 4, 1999 by the detaining authority. The order of detention, therefore, may be quashed.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. Having regard to rival side contentions, it may be noted that the order is based on statements of anonymous witnesses. The statements are not personally verified by the detaining authority. No exercise is undertaken to examine the background, character, antecedents etc. of the detenu before exercising powers under section 9(2) of the PASA Act. The detaining authority has relied on the verification made by the Sub Divisional Magistrate

but that too is in respect of only three witnesses. Still powers are exercised by the detaining authority in respect of 5 anonymous witnesses and therefore, there is improper exercise of power on the part of the detaining authority which has affected the right of the detenu of making an effective representation.

#. Apart from the above, the order suffers from the defect of a gross delay. There appears no live link between the order and the activities alleged of the detenu. The last offence registered against the detenu relates to 22nd June, 1999, whereas the order is passed on December 4, 1999. Even the statements of anonymous witnesses refer to incidents of June, 1999. There is nothing to indicate continued activities of the petitioner after June, 1999. The live link is, therefore, snapped which is not considered by the detaining authority and the order, therefore, can be said to have been passed in the absence of any material. The petition therefore deserves to be allowed.

#. The petition is allowed. Impugned order of detention dated December 4, 1999 is hereby quashed and set aside. The detenu - Sharifaben Abdul Rahim Pathan is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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